

REMARKS

The invention as claimed in each of claims 8 and 14 is clearly distinguished from the invention according to U.S. Patent No. 6,404,545 to Ishiwata with respect to the technical object to be achieved thereby. The technical object of the invention according to Ishiwata is to obtain a sectioning image from a single layer. On the other hand, the technical object of the invention claimed in each of claims 8 and 14 is to observe a three-dimensional structure of a sample.

Thus, the invention claimed in claim 8 comprises a phase varying means arranged between convergence/collimation lenses for varying a phase of a transmitting light beam in a given area on a plane traversing the optical axis so as to stepwise adjust a depth of an observation plane of the objective lens, and the invention claimed in claim 14 comprises a rotating disc having plural phase plate segments thereon, the respective phase plate segments having optical characteristics stepwise different from each other and being adjacently arranged in a circumferential direction.

In Ishiwata, a rotating disc 12 is not a disc having a plurality of phase plate segments but an aperture pattern plate and cannot vary a phase of a transmitting light beam. Ishiwata fails to disclose a phase varying means defined in claim 8 and 14 and cannot observe a sample as a multilayer structure.

In view of the foregoing points, the present invention as claimed in each of claims 8 and 14 are considered to be new and also to be based on an inventive step. For this reason, the pending claims 8 and 14 are deemed to be allowable. The indicated allowability of claim 9 is gratefully acknowledged. The pending claims 10-13 are dependent claims of the pending claim 8, so that they are allowable at least for the reasons that the pending claim 8 is allowable.

Wherefore, a favorable action is earnestly solicited.

Respectfully submitted,

KIRSCHSTEIN, OTTINGER, ISRAEL & SCHIFFMILLER, P.C.

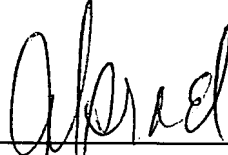
Attorneys for Applicant(s)

489 Fifth Avenue

New York, New York 10017-6105

Tel: (212) 697-3750

Fax: (212) 949-1690

A handwritten signature in cursive script, appearing to read "Alan Israel", is written over a horizontal line.

Alan Israel

Reg. No. 27,564